

SUBCHAPTER A : DEFINITIONS
§§116.10 - 116.14

§116.10. General Definitions

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (TNRCC or commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to General Rules), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Actual emissions - For the purposes of determining whether there has been a net increase in allowable emissions under §116.116(e) of this title (relating to Changes to Facilities), the highest rate of emissions of an air contaminant actually achieved from a qualified facility within the 120-month period prior to the change. This rate cannot exceed any applicable federal or state emissions limitation.

Allowable emissions - For the purpose of determining whether there has been a net increase in allowable emissions under §116.116(e) of this title, the authorized rate of emissions of an air contaminant from a facility as determined in accordance with this section. This rate cannot exceed any applicable state or federal emissions limitation.

(A) Permitted facility - For a facility with a preconstruction permit under this chapter, the allowable emissions shall be any emission limit established in the permit on a MAERT and any emission limit contained in representations in the permit application which was relied upon in issuing the permit, plus any allowable emissions authorized by a standard exemption.

(B) Standard exemption facility - For a facility operating under a standard exemption, the allowable emissions shall be the least of the emissions rate allowed in §116.211 of this title (relating to Standard Exemption List), the emissions rate specified in the applicable exemption, or a federally enforceable emissions rate established on a PI-8 form.

(C) Grandfathered facility - For a qualified grandfathered facility, the allowable emissions shall be the maximum annual emissions rate after the implementation of any air pollution control methods to become a qualified facility, plus 10% of the maximum annual emissions rate prior to the implementation of such control methods, but in no case shall the allowable emissions be greater than the maximum annual emissions rate prior to the implementation of such control methods. The maximum annual emissions rate is the emissions rate at the maximum annual capacity according to the physical or operational design of the facility, data from actual operations over a period of no more than 12 months that demonstrates the maximum annual capacity, or other information that demonstrates the maximum annual capacity. Except where a grandfather facility has been modified, the allowable emissions for the modification shall be determined as a permitted facility.

(D) Standard permit facility - For a facility authorized by standard permit, other than §116.617(2) of this title (relating to Standard Permits List), the allowable emissions shall be the maximum emissions rate represented in the registration for the standard permit.

(E) Special exemption facility - For a facility operating under a special exemption, the allowable emissions shall be the emissions rate represented in the original special

exemption request.

(F) The allowable emissions for a qualified facility shall not be adjusted by the voluntary installation of controls.

BACT - Best Available Control Technology with consideration given to the technical practicability and the economic reasonableness of reducing or eliminating emissions from the facility.

De minimis impact - A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source which has undergone a major modification, which does not exceed the following specified amounts.

<u>AIR CONTAMINANT</u>	<u>ANNUAL</u>	<u>24-HOUR</u>	<u>8-HOUR</u>	<u>3-HOUR</u>	<u>1-HOUR</u>
INHALABLE PARTICULATE MATTER (PM ₁₀)	1.0 µg/m ³	5 µg/m ³			
SULFUR DIOXIDE	1.0 µg/m ³	5 µg/m ³		25 µg/m ³	
NITROGEN DIOXIDE	1.0 µg/m ³				
CARBON MONOXIDE			0.5 mg/m ³		2 mg/m ³

Emissions unit - Any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act (FCAA).

Facility - A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility.

Federally enforceable - All limitations and conditions which are enforceable by the Administrator of the United States Environmental Protection Agency (EPA), including those requirements developed pursuant to Title 40 of the Code of Federal Regulations Parts 60 and 61 (40 CFR 60 and 61), requirements within any applicable State Implementation Plan (SIP), any permit requirements established pursuant to 40 CFR 52.21, or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including permits issued under the EPA-approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

Grandfathered facility - Any facility that is not a new facility since it was constructed prior to the permit requirements of this subchapter.

Lead smelting plant - Any facility which produces purified lead by melting and separating lead from metal and nonmetallic contaminants and/or by reducing oxides into elemental lead. Raw materials consist of lead concentrates, lead bearing ores or lead scrap, drosses, or other residues. Additional processing may include refining, alloying, and even oxidizing into lead oxide. A facility which only remelts lead bars or ingots for casting into lead products is not considered to be a smelter.

Maximum allowable emissions rate table (MAERT) - A table included with a preconstruction permit issued under this chapter that contains the allowable emission rates established by the permit for a facility.

Modification of existing facility - Any physical change in, or change in the method of

operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more TNRCC exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, pursuant to the TCAA, §382.057, from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emission of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted pursuant to the TCAA, §382.057, from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted pursuant to the TCAA, §382.057, an air pollution control method that is at least as effective as the BACT that TNRCC required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit; or

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of any air contaminant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only pursuant to standard exemptions; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with the TCAA, §382.060, as that section existed prior to September 1, 1991.

New facility - A facility for which construction is commenced after August 30, 1971, and no contract for construction was executed on or before August 30, 1971, and that contract specified a beginning construction date on or before February 29, 1972.

New source - Any stationary source, the construction or modification of which is commenced after March 5, 1972.

Nonattainment area - A defined region within the state which is designated by EPA as failing to meet the National Ambient Air Quality Standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of the FCAA, §107(d).

Public notice - The public notice of application for a permit as required in this chapter.

Qualified facility - An existing facility that satisfies the criteria of either subparagraph (E)(i) or (ii) under the definition of modification of existing facility in this section.

Source - A point of origin of air contaminants, whether privately or publicly owned or operated.

Adopted February 14, 1996

Effective March 7, 1996

§116.11. Compliance History Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (TNRCC or commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to General Rules), the following words and terms, when used in the undesignated head of this chapter regarding Compliance History, shall have the following meanings, unless the context clearly indicates otherwise.

Adjudicated decision - Any conviction, final order, judgement, or decree as follows:

(A) a criminal conviction of the applicant in any court for violation of any law of this state, another state, or of the United States governing air contaminants;

(B) a final order, judgement, or decree of any court or administrative agency, or agreement entered into settlement of any legal or administrative action brought in a court or administrative agency, addressing:

(i) the applicant's past performance or compliance with the laws and rules of this state, another state, or of the United States governing air contaminants; or

(ii) the terms of any permit or order issued by the commission; or

(C) an order of any court or administrative agency, whether final or not, respecting air contaminants for the facility that is the subject of the permit application.

Compliance event - An adjudicated decision or compliance proceeding as defined in this section.

Compliance history - The record of an applicant's adherence to air pollution control laws and rules of the State of Texas, other states, and of the United States except as provided in §116.123 of this title (relating to Effective Dates), the history shall be for the five-year period prior to the date on which the application for issuance, amendment, or renewal is filed. The compliance history shall include all compliance events, as defined in this section.

Compliance proceeding - A notice of violation issued by the TNRCC or other agency for which the TNRCC has recommended formal enforcement action and has notified the applicant of such recommendation.

Existing site - A plant property that is not a new site.

New site - A plant property having an operating history less than five years in length as of the date of application.

Adopted August 16, 1993

Effective September 13, 1993

§116.12. Nonattainment Review Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to General Rules), the following words and terms, when used in the undesignated head regarding Nonattainment Review, shall have the following meanings, unless the context clearly indicates otherwise.

Actual emissions - Actual emissions as of a particular date shall equal the average rate, in tons per year (tpy), at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The executive director may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions, e.g., when the allowable limit is reflective of actual emissions. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit the unit on that date.

Allowable emissions - The emissions rate of a stationary source, calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both), and the most stringent of the following:

(A) the applicable standards set forth in Title 40 Code of Federal Regulations (CFR), Part 60 or 61;

(B) the applicable State Implementation Plan (SIP) emissions limitation including those with a future compliance date; or

(C) the emissions rate specified as a federally enforceable permit condition including those with a future compliance date.

Begin actual construction - In general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

Building, structure, facility, or installation - All of the pollutant-emitting activities which belong to the same industrial grouping are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial

grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

Commence - As applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Construction - Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

Contemporaneous period - As follows.

(A) For major sources with the potential to emit 250 tpy or more of a nonattainment pollutant, the period between:

(i) the date five years before construction on the particular change commences or November 15, 1992, whichever date is earlier;

(ii) the date that the increase from the particular change occurs.

(B) For major sources with the potential to emit less than 250 tpy of a nonattainment pollutant, the period between:

(i) the date five years before construction on the particular change commences; and

(ii) the date that the increase from the particular change occurs.

(C) Notwithstanding subparagraphs (A) and (B) of this definition, for major sources of nitrogen oxides (NO_x) as a precursor to ozone in ozone nonattainment areas, the contemporaneous period shall begin no earlier than November 15, 1992.

De minimis threshold test - A method of determining if a proposed emission increase will trigger nonattainment review. The summation of the proposed increase with all other creditable source emission increases and decreases during the contemporaneous period is compared to the MAJOR MODIFICATION column of Table I (in tpy) for that specific nonattainment area. If the major modification level is exceeded, then nonattainment review is required.

Lowest achievable emission rate - For any emitting facility, that rate of emissions of a contaminant which does not exceed the amount allowable under applicable New Source Performance Standards promulgated by the United States Environmental Protection Agency under the Federal Clean Air Act (FCAA), §111 and which reflects the following:

(A) the most stringent emission limitation which is contained in the rules and regulations of any approved SIP for a specific class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or

(B) the most stringent emission limitation which is achieved in practice by a specific class or category of facilities, whichever is more stringent.

Major facility/stationary source - Any facility/stationary source which emits, or has the potential to emit, the amount specified in the MAJOR SOURCE column of Table I of this section or

more of any air contaminant (including volatile organic compounds (VOC)) for which a National Ambient Air Quality Standard (NAAQS) has been issued. Any physical change that would occur at a stationary source not qualifying as a major stationary source in Table I of this section, if the change would constitute a major stationary source by itself. A major stationary source that is major for VOC or NO_x shall be considered major for ozone. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in Title 40 CFR, Part 51.165(a)(1)(iv)(C).

Major modification - Any physical change in, or change in the method of operation of a facility/stationary source that causes a significant net emissions increase for any air contaminant for which an NAAQS has been issued. At a facility/stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified in the MAJOR SOURCE column of Table I of this section. At an existing major facility/stationary source, the increase must equal or exceed that specified in the MAJOR MODIFICATION column of Table I. A physical change or change in the method of operation shall not include:

- (A) routine maintenance, repair, and replacement;
- (B) use of an alternative fuel or raw material by reason of an order under the Energy Supply and Environmental Coordination Act of 1974, §2(a) and (b) (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (C) use of an alternative fuel by reason of an order or rule of the FCAA §125;
- (D) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (E) use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976 (unless such change would be prohibited under any federally enforceable permit condition established after December 21, 1976) or the source is approved to use under any permit issued under regulations approved pursuant to this chapter;
- (F) an increase in the hours of operation or in the production rate (unless the change is prohibited under any federally enforceable permit condition which was established after December 21, 1976); or
- (G) any change in ownership at a stationary source.

TABLE I
MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT RATIO	MAJOR SOURCE	MAJOR MODIFICATION²	OFFSET
<u>net increase</u>	<u>tons/year</u>	<u>tons/year</u>	<u>minimum</u>
OZONE ³			
I marginal	100	40	1.10 to 1
II moderate	100	40	1.15 to 1
III serious	50	25	1.20 to 1
IV severe	25	25	1.30 to 1
CO			
I moderate	100	100	1.00 to 1 ⁴
II serious	50	50	1.00 to 1 ⁴
SO ₂	100	40	1.00 to 1 ⁴
PM ₁₀			
I moderate	100	15	1.00 to 1 ⁴
II serious	70	15	1.00 to 1 ⁴
NO _x	100	40	1.00 to 1 ⁴
Lead	100	0.6	1.00 to 1 ⁴

¹ Texas nonattainment area designations are specified in Title 40, Code of Federal Regulations, §81.344.

² The major modification threshold is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of NO_x and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area) and for other pollutants are equal to the major modification level listed in Table I.

³ VOC and NO_x are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title. For those counties which are designated nonattainment for ozone, but have been granted a permanent exemption for NO_x under the FCAA, §182(f), as specified in §116.150(b) of this title, the NNSR rules apply to sources of VOC, but not to sources of NO_x. For those counties which are designated nonattainment for ozone, but have been granted a temporary exemption for NO_x under the FCAA, §182(f), the NNSR rules apply to sources of VOC and requirements for NO_x are specified in §116.150(c) of this title. NO_x sources granted the temporary exemption and authorized under §116.211 of this title (relating to Standard Exemption List) shall require registration for increases in NO_x over the major source/major modification level listed in Table I.

⁴ The offset ratio is specified to be greater than 1.00 to 1.

VOC = volatile organic compounds

NO_x = oxides of nitrogen

CO = carbon monoxide

SO₂ = sulfur dioxide

PM₁₀ = particulate matter of less than ten microns in diameter

Necessary preconstruction approvals or permits - Those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable SIP.

Net emissions increase - The amount by which the sum of the following exceeds zero: the total increase in actual emissions from a particular physical change or change in the method of operation at a stationary source, plus any sourcewide creditable contemporaneous emission increases, minus any sourcewide creditable contemporaneous emission decreases.

(A) An increase or decrease in actual emissions is creditable only if both of the following conditions are met:

- (i) it occurs during the contemporaneous period; and
- (ii) the executive director has not relied on it in issuing a

nonattainment permit for the source (under regulations approved during which the permit is in effect) when the increase in actual emissions from the particular change occurs.

(B) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(C) A decrease in actual emissions is creditable only to the extent that all of the following conditions are met:

- (i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
- (ii) it is federally enforceable at and after the time that actual construction on the particular change begins;
- (iii) the reviewing authority has not relied on it in issuing a Prevention

of Significant Deterioration or a nonattainment permit, or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(iv) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(D) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(E) At major sources with the potential to emit 250 tpy or more of a nonattainment pollutant:

(i) increases and decreases of such pollutant resulting from authorizations or applications received before November 15, 1992, are creditable to the extent that the increases or decreases occur within the period five years prior to the date construction on a particular change commences and meet all other creditability criteria; and

(ii) increases and decreases of such pollutant, resulting from authorizations or applications received on or after November 15, 1992, are creditable indefinitely to the extent that all other creditability criteria are met.

(F) For all major sources of NO_x in ozone nonattainment areas, increases and decreases of NO_x are creditable only if they resulted from authorizations or applications received on or after November 15, 1992.

Offset ratio - For the purpose of satisfying the emissions offset reduction requirements of the FCAA, §173(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total allowable emissions increases of such pollutants. The minimum offset ratios are included in Table I of this section under the definition of major modification.

Potential to emit - The maximum capacity of a facility/stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the capacity of the facility/stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions, as defined in 40 CFR 51.165(a)(1)(viii), do not count in determining the potential to emit of a stationary source.

Secondary emissions - Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tail pipe of a motor vehicle, from a train, or from a vessel.

Stationary source - Any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the FCAA.

§116.13. Flexible Permit Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Emission cap - Emission limit for a specific air contaminant based on total emissions of that pollutant adjusted by an Insignificant Emissions Factor from all sources that are included in a flexible permit.

Expected maximum capacity - The maximum capacity of a facility according to its physical and operational design and planned operation.

Individual emission limitation - Emission limit for a specific air contaminant not covered by an emission cap for an individual facility adjusted by an Insignificant Emissions Factor.

Adopted November 16, 1994

Effective December 8, 1994

§116.14. Standard Permit Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Oil and gas facility - For the purposes of Subchapter F of this chapter (relating to Standard Permits) only, oil and gas facilities shall be defined as facilities which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids found in geologic formations beneath the earth's surface. These oil and gas facilities include, but are not limited to: oil or gas production facilities; water injection facilities; carbon dioxide separation facilities; or oil or gas pipeline facilities consisting of one or more tanks, separators, dehydration units, free water knockouts, gunbarrels, heater treaters, vapor recovery units, flares, pumps, internal combustion engines, gas turbines, compressors, natural gas liquid recovery units, or gas sweetening and other gas conditioning facilities. This definition does not include sulfur recovery units.

Sulfur recovery unit - For the purposes of Subchapter F of this chapter only, sulfur recovery unit shall be defined as a process device whose primary purpose is to recover elemental sulfur from acid gas.

Off-plant receptor - For the purposes of Subchapter F of this chapter only, off-plant receptor shall be defined as any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities or owner of the property upon which the facilities are located.

Adopted July 26, 1995

Effective September 1, 1995